

## **HOLDING COMPANIES CHAPTER 80-6-1**

### **HOLDING COMPANIES**

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#### **80-6-1-.01 Holding Companies, Generally.**

(1) Georgia's holding company statutes (Code Sections 7-1-605 through 7-1-612) govern all holding companies which have or wish to acquire, by purchase or formation, banks with banking locations in Georgia. Once a holding company acquires a Georgia bank or a bank with Georgia banking locations, it shall be registered annually with the Department. Subsequent acquisitions by that holding company may require approval, a letter form notification, or after the fact notification, depending upon the relationship of the acquisition to Georgia banks or banking locations. The Department requires the submission of certain reports from Georgia bank holding companies and from holding companies that own Georgia banks.

(2) Interstate acquisitions by holding companies are dealt with in Part 19 of Article 2 of Title 7; related mergers of the banks in Part 20 of Article 2 of Title 7. Definitions in those Parts should be applied to interstate transactions.

(3) Expedited processing is available to holding companies which qualify under the criteria in Department of Banking and Finance Rule 80-6-1-.13 or 80-6-1-.16, depending on the transaction. A letter form application with a copy of the federal application may be used and public notice may be coordinated so long as the Department is referenced in the notice as a regulator to whom comments should be submitted. A holding company lawfully owning a bank in Georgia, or lawfully owning a branch of a bank in Georgia which was formed by the acquisition and subsequent merger of a Georgia bank, that meets the criteria in Rule 80-6-1-.16 may qualify for expedited processing for formation of a de novo bank, provided the de novo bank is to be wholly owned by the holding company.

(4) A bank holding company with its principal place of business in Georgia which acquires any bank, and a bank holding company which acquires a bank in Georgia must apply and seek approval from the Department pursuant to Code Section 7-1-622. Approval to become a bank holding company of a Georgia bank as defined in Code Section 7-1-605 is similarly required. A bank holding company lawfully owning a bank in Georgia, or lawfully owning a branch of a

bank in Georgia which was formed by the acquisition and subsequent merger of a Georgia bank, may form a de novo bank with Department approval pursuant to Code Section 7-1-608(b)(3).

(5) A bank holding company with only bank branches in Georgia which does not have its principal place of business here need only notify the Department at least thirty (30) days ahead of its purchase of a bank with no Georgia offices.

(6) The Department has made available an Applications Manual and a Statement of Policies at its Internet website. Details of and policies underlying all required applications, notifications and registrations are contained in these manuals.

(7) Fees for all transactions are provided in Department and Banking and Finance Rule Chapter 80-5-1.

(8) A Georgia bank holding company for the purposes of this Chapter shall be defined as in Code Section 7-1-621:

"Georgia bank holding company" means a bank holding company that:

(1) Has its principal place of business in the State of Georgia; and

(2) Is not controlled by a bank holding company other than a Georgia bank holding company.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-607.

### **80-6-1-.02 Applications.**

(1) A state bank must follow procedures and meet the criteria of the Federal Reserve Bank to become a financial holding company. No state application is necessary. Regular applications for permission to become a bank holding company as defined in O.C.G.A. § 7-1-605, or to acquire control of a banking subsidiary, or to continue to be a holding company after becoming a holding company under circumstances contemplated by Section 7-1-605 which are beyond the control of the company, shall be in letter form accompanied by the following exhibits in duplicate:

(a) A copy of any form or documents filed with the Board of Governors of the Federal Reserve System;

(b) A letter from the applicant's legal counsel containing a definitive statement concerning whether any securities to be issued in the proposed transactions are subject to registration under State and/or Federal Securities Laws and stating that, in the opinion of such counsel, the applicant is taking the necessary action to comply with the applicable State and Federal Securities Laws and Regulations;

(c) A draft copy of any proposed proxy statements or offering circulars or letters prepared in connection with the applicant's proposed bank acquisition;

(d) A copy of the most recent independent audit, if any and if not already on file with the Department, of the applicant's books and records, performed by independent public accountants; and

(e) Proof of publication of the notice described in Rule 80-6-1-.03, if notice is required.

(2) Applicants desiring expedited processing for formation of a one-bank holding company for an existing bank with no publication requirement must meet the qualifying criteria in Department of Banking and Finance Rule 80-6-1-.13, and submit a letter application describing the transaction and support for qualification under the Department's criteria. Completed applications will be processed in 30 days.

(3) Regular applications for permission for a holding company to acquire shares of stock in a bank including a savings bank or savings and loan association which will result in the holding company having direct or indirect control of five (5) percent to twenty-five (25) percent of the voting shares of the acquired bank shall be in letter form accompanied by the following exhibits in duplicate:

(a) Material requested in subparagraphs (a) through (e) of Paragraph (1) of this Rule.

(4) Interstate and intrastate holding company acquisitions requiring approval may qualify for expedited processing. A letter form application describing the transaction shall be filed together with support for qualification under the Department's criteria and a copy of the federal form or documents. Publication may be done according to Department of Banking and Finance Rule 80-6-1-.03 or in conjunction with the federally required notice, provided the reference to the Department of Banking and Finance is included as provided in the notice regulation, Rule 80-6-1-.03.

(5) Regular applications for permission for a holding company or a subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank, or to merge two or more holding companies, shall be in letter form accompanied by the following exhibits in duplicate:

(a) Material requested in paragraphs (a) through (e) of Paragraph (1) of this Rule.

(6) Expedited processing for acquisitions or mergers described in Paragraph (5) of this rule is available to qualifying institutions under the same terms as in Paragraph (4).

(7) Expedited processing may be allowed for a qualifying bank holding company lawfully owning a bank or branch office in Georgia, to form a de novo bank. The procedure is outlined in the Applications Manual.

(8) No application filed pursuant to Paragraphs (3), (5) or (7) of this Rule shall request approval to acquire shares of more than one bank. In general, applications will be considered by the Department in order of receipt; simultaneous applications by a single applicant will be considered in the order requested by the applicant. No application filed pursuant to Paragraph (5) of this Rule shall request approval of more than one merger or acquisition.

(9) Final copies of written materials to be transmitted to shareholders to consummate any transaction which has been the subject of an application under this Rule, marked to indicate changes from the preliminary materials filed pursuant to Paragraphs (1)(c), (3)(b) and (5)(b) of this Rule, shall be filed with the Department prior to the actual transmission thereof to the shareholders. The Department may, in the event changes in such materials necessitate additional review, require that transmission to shareholders be delayed until such time as its review shall have been completed. This section shall not be applicable to an application which is subject to

registration under the provisions of The Securities Act of 1933, as amended, or The Georgia Securities Act of 1973, as amended.

(10) Approval of an application filed pursuant to this Rule shall be valid for a period of twelve (12) months and shall expire at that time unless the acquisition has been completed prior to such expiration or unless extended by the Department.

(11) Any material additions or changes in the method of acquisition by purchase or formation or in the representations set forth in an application must be approved by the Department, and could delay processing. The Department may examine, investigate, and evaluate facts related to any filing as necessary to reach an informed decision.

Authority Ga. L. 1976, pp. 168, 175, Act 762.

### **80-6-1-.03 Public Notices.**

(1) The applicant shall publish not more than thirty (30) days prior to filing the application the following notice in a newspaper of general circulation in the county where the bank or holding company to be acquired is located:

#### **NOTICE OF PROPOSED ACQUISITION OR MERGER BY A COMPANY OR A HOLDING COMPANY**

Pursuant to the Official Code of Georgia and regulations of the Department of Banking and Finance, notice is given that (name of company in boldface type), (city and state of principal place of business), (a holding company) (company), proposes to (acquire shares of) (merge with) (name of bank or holding company), (city and state of principal place of business), and has applied to the Department of Banking and Finance for permission to take such actions.

Persons wishing to comment on this proposal should submit their views in writing within thirty (30) days of the date of publication of this notice to the Department of Banking and Finance, (insert address).

(2) Where an application for a de novo bank is made by a qualified holding company, a charter application notice for public comment will be required in such form as the Department may prescribe.

(3) In lieu of the foregoing, such publication may be in a form and location prescribed by the Federal Reserve Bank or other Regulatory Authority having concurrent jurisdiction, for such a transaction, provided it contains a reference to the Department of Banking and Finance with its address, as a regulator to whom comments should be sent.

Authority Ga. L. 1976, pp. 168, 175.

#### **80-6-1-.04 Audits.**

Every Georgia bank holding company or a holding company that owns a Georgia bank and its non-banking subsidiaries shall be audited at least annually by independent public accountants in accordance with generally accepted auditing standards with copies of such audit maintained on file in the offices of the holding company and for holding companies that own a Georgia state chartered bank, with the Department.

Authority Ga. L. 1976, pp. 168, 175, Act 762.

#### **80-6-1-.05 Reports. Amended.**

(1) On or before the date of the annual stockholders' meeting of a Georgia bank holding company or a holding company owning a Georgia bank, the shareholders of the holding company, regardless of class or voting rights, shall be provided a copy of the audit report required in Rule 80-6-1-.04, or the following schedules prepared on the equity basis of accounting for the last fiscal year on a comparative basis with the preceding fiscal year:

- (a) Year-end balance sheet on both a consolidated basis and a holding company only basis;
- (b) Statement of income and expenses on both a consolidated and a holding company only basis;
- (c) Reconcilement of changes in capital accounts on both a consolidated and a holding company only basis; and
- (d) A statement of cash flows (holding company only).

(2) Changes in control of voting shares of a Georgia bank holding company or a holding company owning a Georgia bank shall be reported to the Department in the same manner as changes in control of bank shares pursuant to Code Section 7-1-236 and Rule 80-1-6-.01.

(3) Failure to file required reports on a timely basis shall subject the holding company to the penalties imposed by Code Section 7-1-68 of the Financial Institutions Code of Georgia.

(4) Notwithstanding the provisions of Paragraph (1), any company complying with the financial disclosure requirements promulgated by the Securities and Exchange Commission shall be deemed to have complied with Paragraph (1).

Authority Ga. L. 1976, pp. 168, 175, Act 762.

#### **80-6-1-.06 Non-Banking Acquisitions.**

(1) Whenever a Georgia bank holding company or a holding company owning a Georgia bank plans to engage in, or to acquire shares of stock in a company to be or which is currently engaged in, non-banking activities, the Department shall be notified of such intentions within ten (10) days of the filing of any application with the Federal Reserve System for approval to engage in such activities or acquire such shares or, in the event such approval is not required, within ten (10) days after the Board of Directors of the holding company authorizes such specific activities

or acquisition or, in lieu thereof, ten (10) days after any notice of engagement in such activities or acquisitions is filed with the Federal Reserve.

(2) Notice to the Department required pursuant to Section (1) of this Rule shall be in letter form and, insofar as is known at the time, shall state the following:

(a) Name and principal location of the company to be acquired, if any;

(b) Number of shares to be acquired, percentage of shares to be acquired to total shares outstanding, and price to be paid for such shares;

(c) Sources of funds to be used to pay for such shares and, if borrowed funds are to be used, the terms of any borrowings;

(d) Statement of Assets and Liabilities and Statement of Income for the most recent fiscal year and year-to-date on the company to be acquired or to otherwise be engaged in non-banking activities;

(e) Nature of business in which company is engaged or is to be engaged; and

(f) Description of additional markets to be served and additional nonbanking activities to be performed.

(3) In the event a notice to the Federal Reserve is required, a bank holding company may provide only a copy of that notice to the Department in lieu of paragraph 2.

Authority Ga. L. 1976, Act 762.

#### **80-6-1-.07 Georgia Bank Holding Companies not Covered by Federal Bank Holding Company Act of 1956, as Amended.**

Companies determined to be holding companies pursuant to Code Section 7-1-605, but not subject to the Federal Bank Holding Company Act of 1956, as amended, are required to file all reports and applications required by Rules 80-6-1-.01 through 80-6-1-.06 notwithstanding such federal exemptions.

Authority Ga. L. 1976, Act 762.

#### **80-6-1-.08 Public Information.**

Unless otherwise indicated in the instructions, applications, annual reports and registration statements filed with the Department or requested by applicants or registrants, submitted to the Department in connection with such filings shall be public information, subject to Rule 80-1-11-.01. Requests for confidential treatment shall be subject to review by the Department. Comments received pursuant to Rule 80-6-1-.03 shall be public information.

Authority Ga. L. 1976, Act 762.

#### **80-6-1-.09 Hearings.**

(1) Notwithstanding the provisions of Rule 80-6-1-.03, the Commissioner may, in his discretion, require public hearings to be held with respect to an application pending before him. Such hearings shall be held in accordance with the provisions of Rule 80-1-1-.05.

(2) Whenever the Commissioner, in his/her discretion, has reason to believe that a company directly or indirectly exercises a controlling influence over the management or policies of a bank or another company, the Commissioner shall cause reasonable notice to be given to the banks or companies involved to show cause why such company should not be found to be a holding company as defined in Code Section 7-1-605 at a hearing to be held at such time and place as shall be specified in the notice. The form of the heretofore required notice and hearings shall be in accordance with the Georgia Administrative Procedures Act.

Authority Ga. L. 1976, Act 762.

#### **80-6-1-.10 Proxies, Offering Circulars, Disclosure Statements.**

(1) It shall be a basis for denial of an application for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive or manipulative acts or practices in connection with any offer to purchase or exchange shares of stock in a bank or a holding company which is the subject of an application hereunder.

(2) No Georgia bank holding company or holding company owning a Georgia bank shall offer to purchase or exchange any stock of any banking subsidiary, either directly or indirectly, unless such offer is accompanied by an offering statement prepared in accordance with standards prescribed for securities required to be registered under The Georgia Securities Act of 1973, as amended. Purchases or exchanges of stocks which are subject to the registration requirements of The Securities Act of 1933, as amended (federal), or The Georgia Securities Act of 1973, as amended, or non-registered securities being acquired by a holding company whose securities are subject to registration under such acts, shall comply with the requirements under those acts.

Authority Ga. L. 1976, pp. 168, 175.

#### **80-6-1-.11 Repealed.**

#### **80-6-1-.12 Liability Funding of Corporate Activities.**

No Georgia bank holding company or holding company owning a Georgia bank may enter into contractual debt obligations which in the aggregate are dependent upon revenues produced by subsidiaries for annual servicing during the term of the debt in excess of fifty (50) percent of the average annual consolidated net operating earnings of such subsidiaries for the three fiscal years immediately preceding the date of the extension of credit. The Department, upon specific written request of the holding company, may waive this requirement.

Authority Ga. L. 1976, pp. 168, 175.

#### **80-6-1-.13 Qualifying Criteria for Expedited Processing; Acquisitions and One-bank Holding Company Formations.**

(1) The qualifying criteria for a bank holding company to be eligible for expedited processing for an acquisition is as follows:

(a) Well-capitalized organization.

(i) Bank holding company (BHC). Both at the time of and immediately after the proposed transaction, the acquiring BHC is well capitalized.

(ii) Insured depository institutions. Both at the time of and immediately after the proposed transaction:

1. The lead insured depository institution of the acquiring BHC is well capitalized;
2. Well-capitalized insured depository institutions control at least eighty (80) percent of the total risk-weighted assets of insured depository institutions controlled by the acquiring BHC; and
3. No insured depository institution controlled by the acquiring BHC is undercapitalized.

(iii) Well capitalized and undercapitalized shall be as defined in the appropriate capital regulation and guidance of the applicable institution's primary federal regulator.

(b) Well-managed organization.

(i) Satisfactory examination ratings. At the time of the transaction, the acquiring BHC, its lead insured depository institution, and insured depository institutions that control eighty (80) percent of the total risk-weighted assets of insured depository institutions controlled by the BHC are well managed as defined by the Board of Governors of the Federal Reserve System, and have received "satisfactory" or better composite ratings at the most recent examination.

(ii) No poorly managed institutions. No insured depository institution controlled by the acquiring BHC has received one of the two lowest composite ratings at the institution's most recent examination or subsequent review by the state or appropriate federal banking agency for the institution.

(iii) Recently acquired institutions excluded. Any insured depository institution that has been acquired by the BHC during the 12 month period preceding the date on which written notice is filed may be excluded from the preceding paragraph if:

1. The BHC has developed a plan acceptable to the Department for the institution to restore the capital and management of the institution; and
2. All insured depository institutions excluded under this paragraph represent, in the aggregate, less than ten (10) percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the BHC.

(c) Convenience and needs criteria.



(i) Effect on the community. The record indicates that the proposed transaction would meet the convenience and needs of the community standard in O.C.G.A. § 7-1-606(b) or the BHC Act; and

(ii) Established CRA performance record. At the time of the transaction, the lead insured depository institution of the acquiring BHC and insured depository institutions that control at least eighty (80) percent of the total risk-weighted assets of insured institutions controlled by the BHC have received a satisfactory or better composite rating at the most recent CRA examination.

(d) Public comment. No comment that is timely and substantive in response to any notice of a transaction is received by the Department or is made known to it by any other regulatory agency, other than a comment that supports approval of the proposal.

(e) Competitive criteria. Without regard to any divestitures proposed by the acquiring BHC, the acquisition does not cause:

1. Insured depository institutions controlled by the acquiring BHC to control in excess of thirty-five (35) percent of market deposits in any relevant banking market; or

2. The Herfindahl-Hirschman index to increase by more than 200 points in any relevant banking market with a post-acquisition index of at least 1800.

3. Any state or federal agency with authority to find that the consummation of the transaction is likely to have a significant adverse effect on competition in any relevant banking market.

(f) Size of acquisition.

(i) Limited growth. Except as provided below, the sum of the aggregate risk-weighted assets to be acquired in the proposal and the aggregate risk-weighted assets acquired by the acquiring BHC in all other qualifying transactions does not exceed thirty-five (35) percent of the consolidated risk-weighted assets of the acquiring BHC. For purposes of this paragraph “other qualifying transactions” means any transaction approved under 12 CFR Section 225.14 or 12 CFR Section 225.23 during the 12 months prior to filing the notice; and

(ii) Individual size limitation. The total risk-weighted assets to be acquired do not exceed \$7.5 billion;

(iii) Small bank holding companies. The limited growth section shall not apply if, immediately following consummation of the proposed transaction, the consolidated risk-weighted assets of the acquiring BHC are less than \$300 million.

(g) Supervisory Actions. During the 12 month period ending on the date on which the BHC proposes to consummate the proposed transaction, no formal administrative order, including a written agreement, cease-and-desist order, capital directive, prompt-corrective-action directive, asset-maintenance agreement or other formal enforcement action, is or was outstanding against the BHC or any depository institution subsidiary of the BHC, and no formal administrative enforcement proceeding involving any such enforcement action, order, or directive is or was pending.

(h) Consummation of the transaction must not violate any provision of the Bank Holding Company Act.

(i) In addition, the Department may deny or remove from expedited processing, any institution's application where it finds that:

1. Safety and soundness concerns of the Department dictate a more comprehensive review;
2. Any material adverse comment is received by the Department;
3. Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;
4. Any other good cause exists for denial or removal.

In this event, the institution will be notified that expedited processing is not available, the reason, and instructions as to how to proceed.

(2)The qualifying criteria for a one-bank holding company formation is as follows:

(a) The shareholder or shareholders who control at least 67 percent of the shares of the bank will control, immediately after the reorganization, at least 67 percent of the shares of the holding company in substantially the same proportion, except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under state or federal law;

(b) No shareholder or group of shareholders acting in concert will, following the reorganization, own or control 10 percent or more of any class of voting shares of the BHC unless that shareholder or group of shareholders was authorized by the Department and the appropriate federal banking agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank;

(c) The bank is adequately capitalized as defined in Section 38 of the Federal Deposit Insurance Act (12 USC § 1831o);

(d) The bank has received at least a composite "1" or "2" rating at its most recent examination, in the event that the bank was examined;

(e) At the time of the reorganization, neither the bank nor any of its officers, directors, or shareholders is involved in any unresolved supervisory or enforcement matters with any appropriate state or federal banking agency;

(f) The company demonstrates that any debt that it incurs at the time of the reorganization, and the proposed means of retiring this debt, will not place undue burden on the holding company or its subsidiary on a pro forma basis;

(g) The holding company would not, as a result of the reorganization, acquire control of any additional bank or engage in any activities other than those of managing and controlling banks; and

(h) In addition, the Department may deny or remove from expedited processing, any institution's application where it finds that:

1. Safety and soundness concerns of the Department dictate a more comprehensive review;
2. Any material adverse comment is received by the Department;
3. Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;
4. Any other good cause exists for denial or removal.

In this event, the institution will be notified that expedited processing is not available, the reason, and instructions as to how to proceed.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-607.

#### **80-6-1-.14 Unlawful Acquisitions, Corporate Restructuring.**

Transactions determined by the Commissioner to in substance constitute an internal corporate restructuring by a Georgia bank holding company shall not be considered to be an acquisition of control within the meaning of §7-1-608.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-607.

#### **80-6-1-.15 Unlawful Acquisitions, Predecessor Institution. Repealed. Reserved.**

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-607.

#### **80-6-1-.16 Qualifying Criteria for Expedited Processing: Establishment of a De Novo Wholly Owned Bank Subsidiary By a Holding Company Lawfully Operating in Georgia.**

(1) Only a holding company which has lawfully purchased or acquired a bank in Georgia may qualify under this Rule to form a de novo bank, pursuant to provisions of Code Section 7-1-608(b)(3). A holding company not already doing a banking business in Georgia may not enter Georgia by forming a new bank here. The holding company must wholly own the proposed bank to qualify for expedited processing.

(2) An eligible holding company must have:

- (a) Consolidated assets of \$150 million or more;
- (b) An assigned composite rating of 2 or better at its most recent state or federal examination; and
- (c) At least seventy-five (75) percent of its consolidated depository institution assets comprised of eligible depository institutions.

(3) An eligible depository institution, for the purposes of this Rule, shall be one that:

(a) Received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent federal or state examination;

(b) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination, if the depository institution is subject to such examination;

(c) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(d) Is well-capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator; and

(e) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority.

(4) An application may be removed from expedited processing for reasons including the following:

(a) Safety and soundness concerns of the Department dictate a more comprehensive review;

(b) Any material adverse comment is received by the Department;

(c) Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;

(d) If applicable, any acquisition of fixed assets would cause the institution to exceed the state fixed asset limitation; or

(e) Any other good cause exists for denial or removal.

Authority O.C.G.A. § 7-1-61, §7-1-606, § 7-1-607, and § 7-1-608.